IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.
APPEAL NO.1015 OF 1998
IN
NOTICE OF MOTION NO.2958 OF 1998
IN
SUIT NO.3481 OF 1996

Air Inn Private Ltd. ..Appellant.

Vs.

M/s. Esteem Builders Pvt. Ltd. & Ors. ..Respondents.

....

Shri V.R. Dhond with Ms. Radhika Kapadia i/b M/s. Parimal K. Shroff & Co. for the Appellant.
Shri M.P. S. Rao with Shri Vachan Bodke and Ms. Madhu Hiraska for Respondent No.1.
Shri A.H. Khatri for Respondent Nos.2, 3 and 5.

....

CORAM: **R. M. S. KHANDEPARKAR, &**
DR. D.Y. CHANDRACHUD, JJ.
9th February, 2007.

P.C. :

Heard.

The Appeal arises from the order dated 17th September, 1998 passed in Notice of Motion 2846 of 1998. The only grievance against the impugned order relates to refusal of the opportunity to file an affidavit in reply to the Motion. In fact while admitting this appeal on 5th October, 1998 it was specifically observed that the Notice of Motion pending before the Learned Single Judge can be heard and disposed of and parties were at liberty to seek leave of the Learned Single Judge to allow them to place on record affidavit

in reply as well as rejoinder, if any. It is stated before us that the Appellant has already affirmed the affidavit in reply and a copy thereof has already been furnished to the Respondent and the Respondent has also affirmed the rejoinder and a copy thereof has been furnished to the Appellant. Considering the fact that the matter relates to the year 1998 and the parties having already prepared their pleadings as well as evidence in support of the pleadings and having exchanged the same between themselves, in fairness of the case and in the interests of justice, we allow the parties to place on record the affidavit in reply as well as the rejoinder. It is needless to say that considering the impugned order the Appellant will have to pay costs of Rs.3,000/- to the Respondent for having been permitted to place on record the affidavit in reply. The impugned order is accordingly modified to the extent that the Appellant shall be permitted to place on record the affidavit in reply subject to the payment of costs of Rs.3,000/- and Respondent No.1 be permitted to place on record their affidavit in rejoinder. With this modification the Appeal is hereby disposed of.

(R. M. S. KHANDEPARKAR, J.)

(DR. D.Y. CHANDRACHUD, J.)